

# INDIVIDUAL FREEDOM MONITOR

Volume 1

Issue 1

May 1993

The Bimonthly Review of Current Legislation - produced by the Society for Individual Freedom

## Legislation Affecting Industry

This review to current and proposed legislation is far from comprehensive and should not be relied upon in relation to the details of the law. It is intended rather to indicate current political trends and draw readers' attention to issues of which they might not otherwise have been aware.

### UK Legislation - current and forthcoming

The Government's leasehold proposals in the *Housing and Urban Development Bill* represents a fundamental attack on freedom of contract and private property. Whilst leasehold may be a peculiar form of tenure, it is a free contract between freeholder and leaseholder. The government's 'enfranchisement' of leaseholders represents nothing less than an attack on the very basis of free markets and individual liberty: private property. Lease holders will gain the right to acquire the freehold for a sum which reflects the 'market value' of the property. However, value in a market relies on a willing buyer and a willing seller - something

that is clearly missing in this case.

Malcolm Moss MP's private member's *Osteopaths Bill*, establishes a new body, General Osteopathic Council (GOC), to provide for the regulation of the profession of osteopathy. Osteopaths will have to pay a subscribed fee to register with this new statutory body. They will have to satisfy the GOC that they are of good character, healthy and have a recognised qualification. This is an example of a professional monopoly being set up and state regulations introduced where none were required.

*The London Local Authorities (No. 2) Bill* being promoted by Westminster Council and other London Boroughs is currently at the Committee stage of its passage through the House of Lords. The Bill introduces new licensing systems for door supervisors (such as nightclub bouncers) and 'near beer clubs'. Near beer clubs are premises which sell non-alcoholic drinks (falsely described as lager or champagne) and provide semi-

clad young girls as companions for customers. This bill will give new powers to police to enter, search and seize property. Due to its wide scope, the powers bestowed by the bill could possibly be used against singles clubs, gay bars and suspected prostitutes. While the bill

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**Legislation primarily concerned with commercial issues often has a significant impact on individual freedom. Not least because of the wide range of state regulation over economic activity, there is considerable scope for controls and restrictions on personal liberty. As F.A. Hayek wrote in *The Road to Serfdom*, "To be controlled in our economic pursuits ... is to be controlled in everything."**

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only affects a relatively small number of businesses, the Government's 'deregulation initiative' does not appear to prevent new regulations being introduced.

### Consultative documents

The DTI's recent Green Paper on 'Abuse of Market Power' is aimed at strengthening legislation on anti-competitive practices. It proposes that companies with dominant market positions

*continued on page 3*



Often regulations are used by government for political expediency. They ease pressures without spending or taxing. The private sector bears the full cost because the costs do not show up on the government's book. One prime example is that the Government ended free eye testing. However, from January 1 new regulations obliged all employers to offer free eye tests to users of VDU screen. Even the Health and Safety Executive concedes there is no medical evidence of any long-term damage to our eyes!

The absurd EC regulations flowing in have become commonplace. Anyone taking these seriously will realise that it is a small business issue because the burden of regulation falls most heavily on smaller firms. Over-regulation, is the biggest obstacle to a successful free-market economy.

What you are now reading is the pilot edition of the Individual Freedom Monitor. This publication is intended to provide information about infringements of individual liberty taking place in the United Kingdom. It will show by example how legislation and regulations impinge our freedom. Its modest eight pages will report on the current legislation passing through both Houses of Parliament and the regulations being imposed. It will also examine and report consultative documents and discussions taking place in Government.

Because most of the burden of regulation falls upon business, I have chosen to open this issue with current and forthcoming legislation affecting businesses. Business Under Fire gives you a flavour of the vast area covered by legislation.

Many of you at one time or another have received unsolicited mail. The question you first ask is: Where did they get my name and address? The odds are that some computer has a cousin whose wife's aunt was asked by her best friend to give your name to her and since you had given the computer your details but forgot to ask it to keep mum you received unsolicited mail. Freedom Monitor looks at the Data Protection Act and what it means to you as an individual.

I thank all those who contributed and since this is the first issue I invite criticism of it. Any offers of help or suggestions for future issues are welcomed.

*Editor*

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The views expressed in this report are those of the contributors and are not necessarily those of the Society for Individual Freedom.

Some examples of legislation in this issue are at different stages of their passage through Parliament. Individual Freedom Monitor will be following their progress and reporting it in future issues. Where legislation is already in force that is clearly indicated.

## Society for Individual Freedom

**President: Lord Monson, Chairman: Peter Campbell**

The Society for Individual Freedom was established in the 1940s by the amalgamation of the Society of Individualists, founded by Sir Ernest Benn, and the National League for Freedom, founded by Lord Lyle.

Members oppose the ever-increasing encroachments by the State on personal liberty. The Society campaigns for more freedom, less State control, less taxation and for more free enterprise in place of protected State and private monopolies. The Society makes representations to MPs and Ministers on issues relating to individual freedom and submits evidence to government committees.



## Business Under Fire

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should be prohibited from 'abusing' that position by excessive or loss-making pricing, refusal to supply and restrictive dealership arrangements. If current competition policy is any guide, new powers would be subject to use for political rather than economic ends and could provide a further mechanism for state meddling in the market process. No attention is paid to the legal monopolies and privileges which restrict market entry and make 'abuse of market power' possible, in fields including postal delivery, road transport, banking, insurance and the professions.

Other current consultative documents on business issues include a review of *Food (Hygiene) (Amendment) Regulations* by the Department of Health and consultation on amendments to the Control of Substances Hazardous to Health (COSHH) Regulations by the Health and Safety Executive. It is questionable whether these consultations will enable the removal of over-

regulation and the introduction of more market based alternatives, or whether simply represent a further opportunity for vested interest to profit at the expense of commercial freedom.

### EEC Legislation - draft instruments

Recently tabled Commission proposals include: a proposal on the approximation of laws on personal protective equipment (such as safety goggles and gloves), COM (92) 421; a regulation concerning technical assistance to the USSR, COM (92) 475; a regulation establishing the Cohesion Fund, COM (92) 599; a directive restricting air pollution by vehicles, COM (92) 572 and a directive on the sulphur content of certain liquid fuels, COM (92) 600.

### Other news and issues

The Association of British Chambers of Commerce (ABCC) has proposed a system of compulsory registration for all businesses. In order to trade, businesses would have to pay an annual fee (£50) and submit information to 'Business Registration Centres'. This represents

a significant move towards continental-style public law status chambers of commerce. If the proposal is adopted, people would have to receive permission from the state if they wished to enter into business. Further worrying implications for individual freedom arise from the existence of a comprehensive national database of compulsorily-provided information. ABCC claims that the proposal would help the UK implement a proposed EC directive on business information.

A little-noticed High Court decision in February supported the concept of 'equal pay for work of equal value' following a case brought under sex discrimination legislation. The Court supported an application from female packers that they should be paid the same as male workers in the same company who were doing a different job but, it was claimed, were doing work of "equal value". The notion of "equal pay for work of equal value" is an abuse of anti-discrimination legislation. Value is subjective, and it must be up to employers and employees, rather than the courts, to determine the 'value' of particular types of work.

## In Brief + + In Brief + + In Brief + + In Brief

### Passive Smoking

There is increasing pressure being placed upon employers to introduce smoking restrictions, if not total bans, in the work place.

In a revised and updated booklet, (IND(G)63(L), on passive smoking at work by the Health and Safety Executive (HSE) employers are urged to give priority to the needs of non-

smokers who do not wish to breathe in tobacco smoke.

The booklet recommends that all employers, after consultation with their employees, should develop and implement a policy on smoking in the work place. As part of such a policy non-smoking should now be regarded as the norm in enclosed work places with special provision being provided for smokers.

The booklet claims passive smoking may be causing several hundred lung cancer deaths a year in the UK, and indicates other possible connections with ill health.

Catering for the needs of smokers and non-smokers is a matter that can be resolved by employers and their employees without government interven-

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# Data Protection Act

The Data Protection Act (DPA) 1984 grew out of public concern about personal privacy in the face of rapidly developing computer technology. It provides new rights for individuals and demands good computer practice in handling information about people.

## Why have Data Protection?

The Data Protection Act 1984 grew out of public concern about personal privacy in the face of rapidly developing computer technology. It provides new rights for individuals and demands good computer practice in handling information about people. The Act also enabled the United Kingdom to ratify the Council of Europe Convention on Data Protection.

## What does the Act cover?

The Act is concerned with 'personal data' which is 'automatically processed'. It works in two ways, giving individuals certain rights whilst requiring those who record and use personal information on computer to be open about that use.

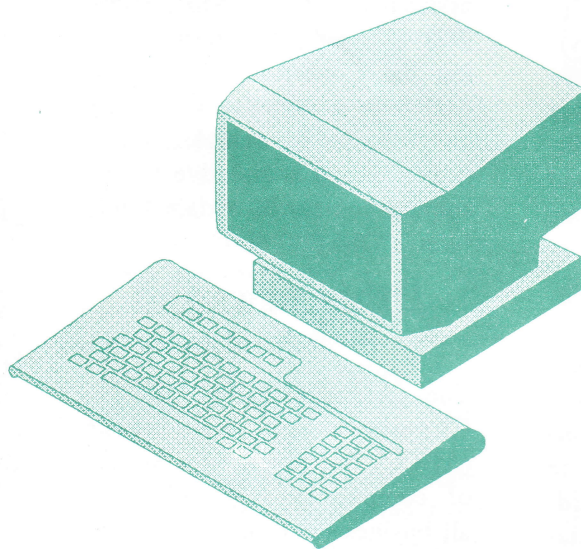
► **Personal data** - is information about living, identifiable individuals. This can be as little as a name and address.

► **Automatically processed** - means information which is processed by computer. It does not cover information which is held and processed manually.

## What does the Act mean?

If you hold or control personal data on computer, you must register with the Data Protection Registrar.

► **Registration** - Registration is normally for three years and a



*With a few exceptions, if you hold or control personal data on computer, you must register with the Data Protection Registrar.*

standard fee is payable to cover this period. Computer bureaux which process personal data for others or allow data users to process personal data on their computers must also register. The register entries will only contain their names and addresses. The penalty for non-registration can be a fine of up to £2000 plus costs in the Magistrates Courts or an unlimited fine in the Higher Courts.

► **The Exemptions** - In some circumstances it is not necessary to register your use of personal data. Registration may not be

necessary where personal data are:

- 1) held in connection only with personal, family or household affairs or for recreational use;
- 2) used for preparing the text of documents;
- 3) used for calculating wages and pensions, keeping accounts, or keeping records of purchases and sales for accounting purposes only;
- 4) used for distributing articles or information to data subjects;
- 5) held by a sports or recreational club which is not a limited company or a charity.

In both 4 and 5 above, data subjects must be asked if they object to the use of their details.

## What does DATA Protection mean to an individual?

**Subject Access** - the DPA allows you to have access to information held about yourself on computer and where appropriate to have it corrected or deleted. This is known as 'subject access right' and it means that you are entitled, on making a written request to a data user, to be supplied with a copy of any personal data held about you.

► **Access to the Register** - The Data Protection Register is open to public at the Registrar office

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## Data Protection Act

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in Wilmslow. Copies of individual register entries are available free of charge.

### ► Complaints to the Registrar

- If you consider there has been a breach of one of the Principles you are entitled to complain to the Data Protection Registrar. If the Registrar considers the complaint is justified he may decide to prosecute or to serve an enforcement notice.

► **Compensation** - You are entitled to seek compensation through the Courts if damage has been caused by the loss, or unauthorised (i.e. without the authority of the data user or

computer bureau concerned) destruction or disclosure of your personal data. You may also seek compensation through the Courts for damage caused by inaccurate data.

## Draft EC General Directive on Data Protection

The revised text of the EC General Directive gives emphasis to the right of privacy. The following changes give added protection to individuals whilst relaxing the burden on commercial organisations:

The structure of the directive has been changed to give prominence to the general principles of good practice which are presently at the heart of the

United Kingdom Data Protection Act;

The public and private sectors are no longer treated separately in the rules to establish a legitimate basis for data processing;

The registration system provides for extensive exemptions from, or simplification to, the requirements for registration;

A right to resist enforced subject access has been included.

► **What Now?** The council of Ministers will now seek to reach a common position on this revised text to be followed round of consultation with the European Parliament before final adoption of the directive. Allowing time for adoption of national legislation, a new UK DPA will be in force by 1995.

# Right to Know Bill

At present the Government can withhold information and cannot be forced to do otherwise. Usually people blindfolded by government secrecy have neither funds nor legal grounds to go to court. Labour MP Mark Fisher aims to change all this.

His *Right to Know Bill* had a successful second reading in the House of Commons. Speaking at the second reading Mark Fisher said: "The principle behind the Bill is straightforward and simple. In a democracy, free access to information should be basic, fundamental right."

## Key Questions

The Bill focuses on two key questions. The first is, who

should know? Should it be Government and civil servants, or all of us? The second is, who should decide what we know? Should it be Ministers or a form of independent arbitration? The Bill is based on the belief that the public have a right to know what the Government is doing in our name, with our money, on our behalf.

The Bill gives people access to all the information and records that are held by Government Departments, local councils and bodies that are financed or regulated by the state. Those bodies will be obliged to publish schedules or directories of the information they hold, so that the public know what is available and can apply to see the information they want. That should

be produced within 30 days. Individuals will be able to see all their medical records, including those before 1991, and personal files such as employment records. At present, Ministers and civil servants decide and control what we should see. The Bill will transfer that power to the public and give them the right to know.

## Exemptions

Certain categories will be exempted if publishing them would cause significant damage, particularly to the national security, defence and international relations, the enforcement of the law, personal privacy and commercial confidentiality. The strategic policy

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# Trade Union Reform and Employment Rights

The Trade Union Reform and Employment Rights Bill was passed in the House of Commons after the third reading. The Secretary of State for Employment, Mrs Gillian Shepherd in moving the Bill said: "The Bill is, above all, a Bill that creates new rights for people at work." The Bill is in four parts.

## Trade Unions

The bill gives important new rights to all trade union members. It will give employees the right to join the union of their choice, not the union chosen for them by a Trade Union Congress committee. Trade union members will have a right to a postal ballot before a strike and the right to have that ballot independently scrutinised. It gives all union members new protection against mismanagement of their union's finances

and new protection against fraud and abuse in union's elections.

Trade unions will be required to give seven days' notice before taking strike action. This is essential if both employers and customers are to be able to pursue their businesses with minimum disruption and if the economy is not to suffer serious damage from industrial action.

## Employment

The bill gives women in employment a right to 14 weeks maternity leave, regardless of the number of hours worked or the length of service. It gives them the right not to be dismissed because of pregnancy or exercising the statutory right to maternity leave. It gives every employee who works for more than eight hours a week the right to receive a written statement explaining his or her basic terms and conditions of employ-

ment.

## Other Employment Matters

Wages Councils are to be abolished. Far from protecting the workers, Wages Council constitute an unnecessary and bureaucratic intervention in the labour market. This measure will encourage labour market flexibility and contribute to British Industry's recovery from recession.

Also, the terms of reference of ACAS are to be changed to remove its statutory duty to promote collective bargaining. It is quite correct that no agency of the Government should be charged with promoting collective bargaining. It should be entirely up to individual workers to decide which method of determining terms and conditions of employment is most favourable to them.

## Right to Know Bill

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advice given to Ministers by civil servants is also exempt, but not the information or material by which ministerial decisions are made, or expert and technical advice.

## Independent Tribunal

The Bill provides, first, for a process of voluntary internal review. If that is not deemed satisfactory, it establishes an

independent tribunal and commissioner appointed by Her Majesty on the recommendation of the Prime Minister, the Leader of the Opposition and a select Committee. The commissioner and tribunal shall have powers of the court to call for information or records, and their findings will have the same force as a court order. The commissioner will lay a report before the house annually.

## Reform of Current Acts

The Bill would also reform the *Official Secrets Act 1989* by ending the absolute offence of

any disclosure, however justified, and by providing the possibility of a public interest defence. The Bill would amend the *Companies Act 1985*. It would require companies to publish in their annual report all instances of their being found to be in breach of legislation on environmental protection, health and safety, discrimination, trades description and other consumer protections listed. In addition to the annual accounts that they lodge with Companies house, companies would be required to provide a list of injuries and fatalities to their work force during the year.



## In Brief

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tion. More worrying is the credence the HSE appears to be giving in its booklet to inconclusive and possibly spurious scientific findings. 30 small studies have examined the effects of passive smoking. Their findings have supported opinions varying from the claim that passive smoking increases the risk of lung cancer to the claim that it could protect against lung cancer.

In a critical evaluation of all available evidence, Dr Peter Lee concluded: "The evidence reviewed does not demonstrate that exposure to environmental tobacco smoke increases the risk of cancer and heart disease."

## Human Fertilisation (Choice) Act 1993

In January 1993 two doctors claimed to have opened Europe's first clinic to help parents choose the sex of their baby. They will offer married couples who already have a child an improved chance of having a baby of the sex they

want by using artificial insemination.

The London Gender Clinic in Hendon is run by a chemical pathologist, Dr Alan Rose and biochemist, Dr Peter Liu. They believe it is unfair for parents to be denied choice using technology that has been available in the US for three years.

The British Medical Association believes gender selection is unethical, except to prevent sex-inherited diseases like haemophilia. In Parliament also there is opposition to gender selection.

David Amess MP introduced the Human Fertilisation (Choice) Bill. This is a bill to prohibit the use of techniques designed to influence the sex of a foetus at conception; and for related purposes. It seeks to amend Schedule 2 of the Human Fertilisation and Embryology Act 1990. Schedule 2 covers restrictions on activities which licences for treatment may authorise.

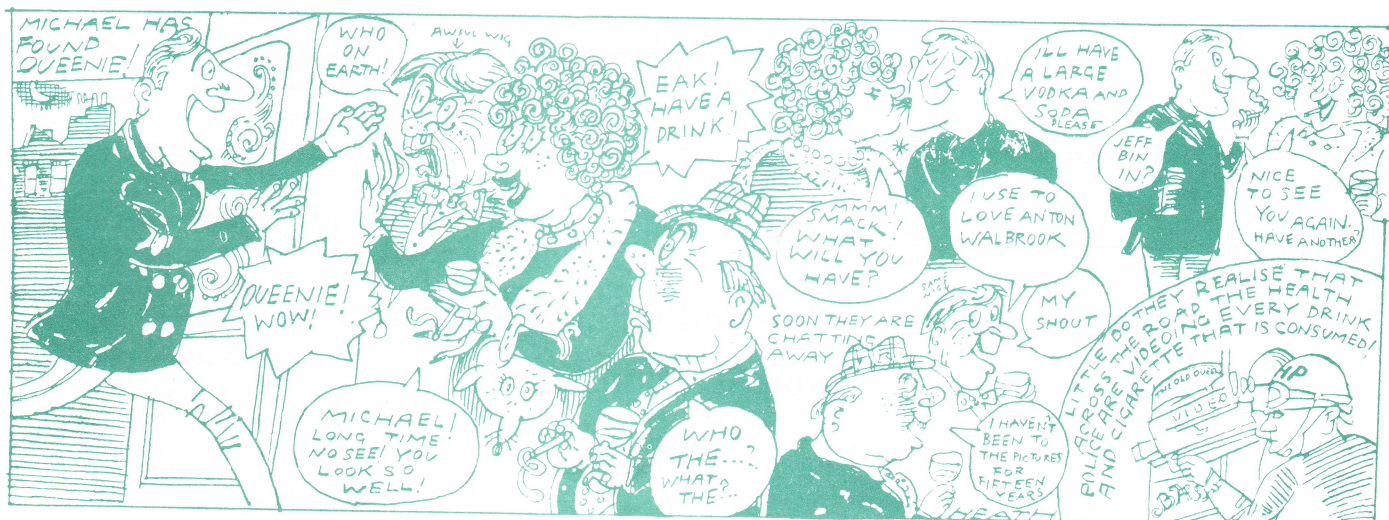
# Carrying of Knives etc. (Scotland) Bill

On 2 March Phil Gallie MP presented the Carrying of Knives etc. (Scotland) Bill.

Clause 1 of the Bill creates an

offence in Scotland of having in a public place a bladed or sharply pointed article. Folding pocketknives with blades of 3 inches or less are exempted. It is a defence to prove that a person had good reason or lawful authority for having the article or that it was for use at work, for religious reasons or as part of a national costume. The offence is triable summarily with a maximum penalty of a fine of level 3 on the standard scale (£1000). The court is empowered to order forfeiture of the article following conviction.

Clause 2 empowers a constable to stop and search a person suspected of committing an offence under clause 1 and to arrest him without warrant if the constable is not satisfied that he has given his correct name or address or the constable believes that the person may otherwise go on to commit other offences using articles to which clause 1 applies. The clause also provides that it is an offence to obstruct such a search or to conceal articles from a constable carrying out a search and empowers a constable to arrest without warrant a person believed to be committing such an offence.



Reprinted from The Spectator, 16 January 1993



## Next Edition + + Next Edition

Other than following the progress of the Bill mentioned in this issue, Individual Freedom Monitor will be reporting on other Bills which are currently going through Parliament.

### Regulations in the Pharmaceutical Industry

We will be reporting on two Bills, National Lottery etc. Bill and Medicines Information Bill, which have been amended at their committee stages. We will also be looking at new regulations introduced in the pharmaceutical industry since January 1992 and assessing whether these are beneficial to the in-

dividual consumer.

### Shop (Amendment) Bill

Ray Powell MP introduced his Shops (Amendment) Bill in Parliament. This Bill provides for a general prohibition on the opening on Sunday of shops for retail trade or business. The July issue will be looking at this in detail.

### Business Regulations

Regulations on Businesses will continued to be monitored. In particular we will report on the effect of EC Directives on small businesses in this country.

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